

AMENDED IN ASSEMBLY JUNE 27, 2003

AMENDED IN SENATE MAY 7, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 1005

Introduced by Senator Dunn

February 21, 2003

An act to amend Sections 1279, 1280, 1280.1, and 1280.2 of, and to add Sections 1266.2 and Section 1279.1 to, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1005, as amended, Dunn. Fees: inspections: deficiencies: corrections.

Under existing law, a "health facility" means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical and mental, as specified, and includes, among others, general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined. These facilities are regulated by the State Department of Health Services. A violation of the law relating to health facilities is a misdemeanor.

~~This bill would require the department to levy a fee on these health facilities in order to ensure an adequate level of licensing and certification staff to perform inspections, as required by this bill.~~

~~Under existing law, a general acute care hospital, acute psychiatric hospital, and special hospital, as defined, are required to pay an annual fee, as specified, plus \$8 per bed, with each new and renewal application for a license.~~

~~This bill would require that these facilities, when applying for a new license or a renewal of a license, pay a fee that may not exceed \$5 per bed, in addition to existing fees, as specified.~~

~~This bill would require the department to seek federal financial participation to match the above fees.~~

Existing law contains provisions with respect to the inspection of, and the issuance of ~~citation~~ citations against, general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined.

Existing law also establishes procedures with respect to the identification and correction of deficiencies or the upgrading of quality of care provided by these health facilities.

This bill would make various changes with respect to those provisions.

This bill, in addition, would establish complaint procedures for complaints involving health facilities, as specified.

This bill would make various changes to those provisions.

Existing law states it is the intent of the Legislature that nothing in specified sections of law shall be construed to require the retrofitting of hospital buildings built prior to January 1, 1994, to meet seismic standards in effect on that date.

This bill would change that date to January 1, 2004.

Existing law requires each health facility to pay an annual fee, as specified, with each new and renewal application for a license.

This bill would provide that the activities of the department in implementing the bill shall be funded through fees collected pursuant to this provision.

This bill would provide that its provisions shall become operative on July, 1, 2004.

Because a violation of the provisions of the bill would constitute a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.~~ Section 1266.2 is added to the Health and Safety
2 Code, to read:

3 ~~1266.2. (a) In order to ensure an adequate level of licensing~~
4 ~~and certification staff to perform inspections pursuant to the~~
5 ~~requirements of this article, and to enforce the requirements of this~~
6 ~~chapter, the department shall levy a fee not to exceed five dollars~~
7 ~~(\$5) per bed on health facilities licensed pursuant to subdivisions~~
8 ~~(a), (b), and (f) of Section 1250. This fee may not exceed the actual~~
9 ~~and reasonable costs of enforcement of this article and shall be in~~
10 ~~addition to the license fees levied pursuant to paragraph (1) of~~
11 ~~subdivision (a) of Section 1266.~~

12 ~~(b) The department shall seek federal financial participation~~
13 ~~consistent with Title XIX (42 U.S.C. Sec. 1396 et seq.) of the~~
14 ~~federal Social Security Act to match the fees paid pursuant to~~
15 ~~subdivision (a).~~

16 ~~SEC. 2.~~

17 ~~SECTION 1.~~ Section 1279 of the Health and Safety Code is
18 amended to read:

19 1279. (a) Every health facility for which a license or special
20 permit has been issued, except a health facility, as defined in
21 subdivisions (b) to (k), inclusive, of Section 1250, that is certified
22 to participate either in the Medicare program under Title XVIII (42
23 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or in
24 the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et
25 seq.) of the federal Social Security Act, or both, shall be
26 periodically inspected by a representative or representatives
27 appointed by the state department, depending upon the type and
28 complexity of the health facility or special service to be inspected.

29 (b) If the health facility is deemed to meet standards for
30 certification to participate in either the Medicare program or the
31 medicaid program, or both, because the health facility meets the
32 standards of an agency other than the *federal* Centers for Medicare
33 and Medicaid Services, then, in order for the health facility to
34 qualify for the exemption from periodic inspections provided in
35 this section, the inspection to determine ~~that whether~~ the health
36 facility meets the standards of an agency other than the Centers for
37 Medicare and Medicaid Services shall include participation by the
38 California Medical Association to the same extent as it

1 participated in inspections as provided in Section 1282 prior to the
2 ~~effective~~ *operative* date of this section, ~~as amended by~~ *under* S.B.
3 1779 of the 1991–92 Regular Session.

4 (c) Except as provided in subdivision (d), inspections shall be
5 conducted no less than once every two years and as often as
6 necessary to ensure the quality of care being provided.

7 (d) For a health facility specified in subdivision (a) or (b) of
8 Section 1250, inspections shall be conducted no less than once
9 every three years, and as often as necessary to ensure the quality
10 of care being provided.

11 (e) During the inspection, the representative or representatives
12 shall offer ~~such~~ *the* advice and assistance to the health facility as
13 *that* they deem appropriate.

14 (f) For acute care hospitals of 100 beds or more, the inspection
15 team shall include at least a physician, registered nurse, and
16 persons experienced in hospital administration and sanitary
17 inspections. During the inspection, the team shall offer ~~such~~ *the*
18 advice and assistance to the hospital ~~as~~ *that* it deems appropriate.

19 (g) The department shall ensure that a periodic inspection
20 conducted pursuant to this section is not announced in advance of
21 the date of the inspection. An inspection may be conducted jointly
22 with inspections by entities specified in Section 1282. However,
23 if the department conducts an inspection jointly with an entity
24 specified in Section 1282 that provides notice in advance of the
25 periodic inspection, the department shall conduct an additional
26 periodic inspection that is not announced or noticed to the health
27 facility.

28 (h) Notwithstanding any other provision of law, *for a health*
29 *facility licensed pursuant to subdivision (a), (b), or (f) of Section*
30 *1250*, the department shall inspect for compliance with Section
31 1276.4 during a state or federal periodic inspection, including, but
32 not limited to, an inspection required under this section. This
33 inspection requirement shall not limit the department's authority
34 in other circumstances to cite for violations of Section 1276.4 or
35 to inspect for compliance with Section 1276.4.

36 SEC. 3. Section 1279.1 is added to the Health and Safety
37 Code, to read:

38 1279.1. (a) (1) Upon receipt of a written or oral complaint
39 involving a health facility licensed pursuant to subdivision (a), (b),
40 or (f) of Section 1250, the department shall assign an inspector to

1 make a preliminary review of the complaint, and shall notify the
2 complainant within two working days of the receipt of the
3 complaint of the name of the inspector. Unless the department
4 determines that the complaint is willfully intended to harass a
5 licensee or is without any reasonable basis, it shall conduct an
6 onsite inspection or investigation within 10 working days of the
7 receipt of the complaint. In any case in which the complaint
8 involves a matter that creates a threat of imminent danger of death
9 or serious bodily harm, the department shall make an onsite
10 inspection or investigation within 24 hours of the receipt of the
11 complaint. In any event, the complainant shall be promptly
12 informed of the department's proposed course of action and of the
13 opportunity to accompany the inspector on the inspection or
14 investigation of the facility. Upon the request of either the
15 complainant or the department, the complainant, or a family
16 member or other representative of the complainant, or both, may
17 be allowed to accompany the inspector to the site of the alleged
18 violations during his or her tour of the facility, unless the inspector
19 determines that the privacy of any patient would be violated *or the*
20 *health or safety of the patient would be at risk.*

21 (2) When conducting an onsite inspection or investigation
22 pursuant to this section, the department shall collect and evaluate
23 all available evidence and may issue a citation based upon, but not
24 limited to, all of the following:

- 25 (A) Observed conditions.
- 26 (B) Statements of witnesses.
- 27 (C) Facility records.

28 (3) Within 10 working days of the completion of the complaint
29 investigation, the department shall notify the complainant and
30 licensee in writing of the department's determination as a result of
31 the inspection or investigation.

32 (b) (1) When the department provides notice pursuant to
33 paragraph (3) of subdivision (a), the department shall notify the
34 complainant of the right to an informal conference.

35 (2) A complainant who is dissatisfied with the department's
36 determination regarding a matter that would pose a threat to the
37 health, safety, security, welfare, or rights of a patient may, within
38 five ~~business~~ *working* days after receipt of the notice, notify the
39 director in writing of his or her request for an informal conference.
40 The informal conference shall be held with the designee of the

1 director for the county in which the health facility that is the
2 subject of the complaint is located. The health facility may
3 participate as a party in the informal conference. The director's
4 designee shall notify the complainant and licensee of his or her
5 determination within 10 working days after the informal
6 conference and shall notify the complainant and licensee in writing
7 of the appeal rights provided in subdivision (c).

8 (c) If the complainant is dissatisfied with the determination of
9 the director's designee, the complainant may, within 15 days after
10 receipt of this determination, notify in writing the Deputy Director
11 of the Licensing and Certification Division of the department, who
12 shall assign the request to a representative of the Complainant
13 Appeals Unit for review of the facts that led to the determination.
14 As a part of the Complainant Appeals Unit's independent
15 investigation, and at the request of the complainant, the
16 representative shall interview the complainant in the district office
17 where the complaint was initially referred. ~~If the health facility so~~
18 ~~requests, the representative shall also interview representatives of~~
19 ~~the health facility. This interview shall be conducted separately~~
20 ~~from the interview of the complainant.~~ Based upon this review, the
21 Deputy Director of the Licensing and Certification Division of the
22 department shall make his or her own determination and notify the
23 complainant and the health facility within 30 days.

24 (d) For purposes of this section, "complaint" means any oral
25 or written notice to the department, other than a report from the
26 facility, of an alleged violation of applicable requirements of state
27 or federal law or an allegation of facts that might constitute a
28 violation of applicable requirements of state or federal law.

29 SEC. 4. Section 1280 of the Health and Safety Code is
30 amended to read:

31 1280. (a) The department may provide consulting services
32 upon request to any health facility *in order* to assist in the
33 identification or correction of deficiencies or *in* the upgrading of
34 the quality of care provided by the health facility.

35 (b) The department shall notify the health facility of all
36 deficiencies in its compliance with this chapter and *of* the rules and
37 regulations adopted hereunder, and the health facility shall agree
38 with the department upon a plan of correction that shall give the
39 health facility a reasonable time to correct these deficiencies. The
40 time given to a health facility licensed pursuant to subdivision (a),

1 (b), or (f) of Section 1250 to correct the deficiencies may not
 2 exceed 180 calendar days. The facility may request an extension
 3 of the period of time within which to correct the deficiencies,
 4 except for a violation of Section 1276.4 or any other staffing
 5 requirement. This request shall be in writing and shall state facts
 6 sufficient to demonstrate good cause for the extension and that
 7 patients will not be exposed to a significant hazard if the extension
 8 is granted. The request shall be received by the department ~~no~~ *not*
 9 less than 60 days prior to the expiration of the time within which
 10 to correct the deficiencies. The department may approve the
 11 request for an extension of time if the department finds that the
 12 extension is for good cause and that no patient will be at risk of
 13 significant hazard if the extension is granted. If the department
 14 grants ~~the~~ *an* extension, the department shall provide to the
 15 original complainant or his or her representative notice of the
 16 extension 30 days prior to the date required for implementation of
 17 the plan for corrections. If at the end of the allotted time, as
 18 revealed by inspection, the health facility has failed to correct the
 19 deficiencies, the director may take action to revoke or suspend the
 20 license.

21 (c) (1) In addition to subdivision (a), if the health facility is
 22 licensed under subdivision (a), (b), or (f) of Section 1250, and if
 23 the facility fails to implement, within a reasonable time, a plan of
 24 correction that has been agreed upon by both the facility and the
 25 department, the department may order implementation of the plan
 26 of correction previously agreed upon by the facility and the
 27 department. The time given to the health facility to implement the
 28 plan of correction may not exceed 180 calendar days. The facility
 29 may request an extension of the period of time within which to
 30 implement the plan of correction, except for a violation of Section
 31 1276.4 or any other staffing requirement. This request shall be in
 32 writing and shall state facts sufficient to demonstrate good cause
 33 for the extension and that patients will not be exposed to a
 34 significant hazard if the extension is granted. The request shall be
 35 received by the department ~~no~~ *not* less than 60 days prior to the
 36 expiration of the time within which to implement the plan of
 37 correction. The department may approve the request for an
 38 extension of time if the department finds that the extension is for
 39 good cause and that no patient will be at risk of significant hazard
 40 if the extension is granted. If the department grants ~~the~~ *an*



1 extension, the department shall provide to the original
2 complainant or his or her representative notice of the extension 30
3 days prior to the date required for implementation of the plan for
4 corrections. If the facility and the department fail to agree upon a
5 plan of correction within a reasonable time, which may not exceed
6 60 days, and if the deficiency poses a significant hazard to the
7 health or safety of patients, then the director may take action to
8 order implementation of a plan of correction devised by the
9 department. The order shall be in writing and shall contain a
10 statement of the reasons for the order. If the facility does not agree
11 that the deficiency poses a significant hazard to the health or safety
12 of patients, or if the facility believes that the plan of correction will
13 not correct the hazard, or if the facility proposes a more efficient
14 or effective means of remedying the deficiency, the facility may,
15 within 10 days of receiving the plan of correction from the
16 department, appeal the order to the director. The director shall
17 review information provided by the facility, the department, and
18 other affected parties and, within a reasonable time, shall render
19 a decision in writing that shall include a statement of reasons for
20 the order. During the period in which the director is reviewing the
21 appeal, the order to implement the plan of correction shall be
22 stayed. The opportunity for appeal provided pursuant to this
23 subdivision shall not be deemed to be an adjudicative hearing and
24 is not required to comply with Section 100171.

25 (2) If any condition within a health facility licensed under
26 subdivision (a), (b), or (f) of Section 1250 poses a significant
27 hazard to the health or safety of patients, or if completion of a plan
28 of correction for a significant hazard has not been documented by
29 the department within the agreed period of time for the
30 implementation of the plan of correction, the department may
31 order either of the following until the hazardous condition is
32 corrected:

33 (A) A reduction in the number of patients or a ban on the
34 admission of patients.

35 (B) The closure of all or part of the unit or units within the
36 facility that pose the risk. If the unit to be closed is an emergency
37 room in a designated facility, as defined in Section 1797.67, the
38 department shall notify and coordinate with the local emergency
39 medical services agency.



(3) The facility may appeal an order pursuant to paragraph (2) by appealing to the superior court of the county in which the facility is located.

(4) Paragraph (2) shall not apply to a deficiency for which the facility was cited prior to January 1, 2004.

(d) Reports on the results of each inspection of a health facility shall be prepared by the inspector or inspector team and shall be kept on file in the department along with the plan of correction and health facility comments. The inspection report shall include a recommended date for reinspection in order to ensure compliance with the plan of correction. The reinspection may not be more than 180 days after the citation of deficiency. A reinspection may be conducted during a periodic inspection required pursuant to Section 1279. Inspection reports of an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled—nursing shall be provided by the department to the appropriate regional center pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code.

(e) All inspection reports and lists of deficiencies shall be open to public inspection when the department has received verification that the health facility has received the report from the department. All plans of correction shall be open to public inspection upon receipt by the department.

(f) In no event shall the act of providing a plan of correction, the content of the plan of correction, or the execution of a plan of correction, be used in any legal action or administrative proceeding as an admission within the meaning of Sections 1220 to 1227, inclusive, of the Evidence Code against the health facility, its licensee, or its personnel.

(g) For purposes of this section, “significant hazard” means a condition as a result of which a patient has suffered, or is likely to suffer, serious injury, harm, impairment, or death.

SEC. 5. Section 1280.1 of the Health and Safety Code is amended to read:

1280.1. (a) If a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250 fails to correct a deficiency within the lesser of 180 days or the time specified in a plan of correction or within an extension of that time pursuant to Section 1280, the department may assess *against* the licensee a

1 civil penalty in an amount not to exceed fifty dollars (\$50) per
2 patient affected by the deficiency for each day that the deficiency
3 continues beyond the date specified for correction. For purposes
4 of this section, failure to correct a deficiency may be substantiated
5 by a subsequent validated complaint about a condition similar to
6 the one that gave rise to the deficiency. The civil penalties shall be
7 assessed only for deficiencies that pose a significant hazard, as
8 defined in subdivision (g) of Section 1280, to the health or safety
9 of patients. If the licensee disputes a determination by the
10 department regarding alleged failure to correct a deficiency or
11 regarding the reasonableness of the proposed deadline for
12 correction, the licensee may, within 10 days *of the department's*
13 *determination*, request a hearing pursuant to Section 100171.
14 Penalties shall be paid when appeals pursuant to those provisions
15 have been exhausted.

16 (b) This section shall not apply to a deficiency for which a
17 facility was cited prior to January 1, 1994.

18 (c) A licensee may appeal a civil penalty assessed pursuant to
19 this section. If a civil penalty is appealed pursuant to this section,
20 proceedings shall be conducted in accordance with Section
21 100171.

22 (d) Civil penalties collected pursuant to this section shall be
23 used for the purpose of enforcement of this chapter.

24 SEC. 6. Section 1280.2 of the Health and Safety Code is
25 amended to read:

26 1280.2. (a) No deficiency cited pursuant to paragraph (2) of
27 subdivision (b) of Section 1280 or Section 1280.1 shall be for the
28 failure of a facility to meet the requirements of the California
29 Building Standards Code if, as of January 1, 1994, the hospital
30 building was approved under Chapter 12.5 (commencing with
31 Section 15000) of Division 12.5, or if the hospital building was
32 exempt from that approval under any other provision of law in
33 effect on that date.

34 (b) It is the intent of the Legislature that neither the
35 amendments made to Section 1280 by Chapter 1152 of the Statutes
36 of 1993, nor Section 1280.1 shall be construed to require the
37 retrofitting of hospital buildings built prior to January 1, 2004, to
38 meet seismic standards in effect on that date.

39 SEC. 7. *Notwithstanding any other provision of law, the*
40 *activities of the State Department of Health Services in*

1 *implementing this act shall be funded through fees collected*
2 *pursuant to Section 1266 of the Health and Safety Code.*

3 *SEC. 8. This act shall become operative on July 1, 2004.*

4 *SEC. 9.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

